

REMARKS/ARGUEMENTS

Claim 2 has been canceled.

Upon entry of this Amendment, Claims 1 and 3-16 will be pending the application.

Claim 1 has been amended to require that the claimed gel composition be shear thinning and to require that the gelling agent be a clay gelling agent. Support for these amendments can be found in the specification as filed in the paragraph bridging pages 10 and 11; in Table VI, and in the second paragraph on page 3. Claims 3, 5 and 9 have had their dependencies amended. Claim 13 has been amended to correct an obvious typographical error.

It is submitted that no new matter has been included in the above amendments.

Anticipation Rejection

Claims 1, 2, 5, 6, 9, and 12 – 15 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Pat. No. 6,440,923 (“Lyle”).

Rejections under 35 USC §102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. In re Marshall, 198 USPQ 344 (CCPA 1978). In other words, to constitute an anticipation, all material elements recited in a claim must be found in one unit of prior art. Id.

As indicated by the amendment to claim 1, the compositions of the present invention are shear thinning. Applicants respectfully submit that Lyle does not disclose a shear thinning composition. Therefore, a material element recited in amended claim 1 of the present invention is not disclosed by Lyle. Applicants respectfully submit that the rejection under 35 U.S.C. §102(e) has been overcome, and hereby request withdrawal of the rejection.

Obviousness Rejection

Claims 3, 4, 7, 8, 10 and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lyle.

In making the rejection, the Examiner acknowledged that Lyle does not teach the claimed ranges of clay, water-miscible solvents, or viscosity stabilizer. The Examiner indicated that Lyle taught another thickener, such as PEG-10 methyl glucose dioleate, within the claimed range, and suggested that routine experimentation would provide the appropriate ranges of water-miscible solvent and viscosity stabilizer to achieve the desired viscosity of the composition.

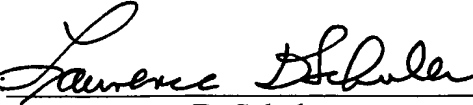
“Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention.” ATD Corp. v. Lydall, Inc., 159 F.3d 534, 546, 48 USPQ2d 1321, 1329 (Fed. Cir. 1998). There must be a teaching or suggestion within the prior art, within the nature of the problem to be solved, or within the general knowledge of a person of ordinary skill in the field of the invention, to look to particular sources, to select particular elements, and to combine them as combined by the inventor.

Applicants claimed invention is a physically stable, shear thinning, sprayable gel composition that utilizes clay as the gelling agent. Applicants respectfully submit that Lyle does not teach or suggest a physically stable, shear thinning sprayable gel that utilizes clay as the gelling agent. It is respectfully submitted that claims 3, 4, 7, 8, 10 and 11 are not obvious over the Lyle reference. Withdrawal of the §103(a) rejection is respectfully requested.

It is noted that the Office Action made no reference to Claim 16. In any event, in view of the foregoing reasoning and discussion, it is respectfully submitted that Claim 16 is allowable.

In view of the reasoning and discussion set forth above, withdrawal of the rejections and allowance of the claims is respectfully requested. If the Examiner wishes to discuss this Amendment, she is asked to call the undersigned attorney at the phone number given below.

Respectfully submitted,

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